

MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

MILPITAS OVERSIGHT BOARD MEETING

Milpitas Community Center Large Meeting Room (7 & 8)
457 East Calaveras Blvd.
Milpitas, CA 95035

MEMBERS:

Emma Karlen
Bruce Knopf, Vice Chair
Mike McInerney, Chair
Michael Mendizabal
Althea Polanski
Matthew Tinsley
Glen Williams

ALTERNATES:

Russell Morreale
Alan Minato

Jane Corpus Takahashi
Suzanne Carrig
Michael Murdter

DRAFT Minutes of the April 14, 2016 Special Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair McInerney called the meeting to order at 10:45 a.m.

ROLL CALL

MEMBERS PRESENT: Emma Karlen, Mike McInerney, Mike Mendizabal, Althea Polanski, Matthew Tinsley and Glen Williams

MEMBERS ABSENT: Bruce Knopf

II. CONTRACT AMENDMENT

Consider and Approve First Amendment to Real Property Purchase Sale Agreement between Successor Agency and Lodging Dynamics Development LLC Regarding Property Located on Alder Drive and Barber Lane, Milpitas, California (APN 086-02-086).

- A. Adoption of Resolution No. 79, Approving First Amendment to Real Property Purchase and Sale Agreement and Mutual Escrow Instructions for NWC Alder Drive and Barber Lane, Milpitas, CA 95035 (APN 086-02-08).

Ms. Montoy presented the staff report via a teleconference call.

Moved by Ms. Polanski and seconded by Mr. Williams to approve the adoption of Resolution No.79. The motion passed unanimously.

III. MEETING ADJOURNMENT

Moved by Mr. Williams and seconded by Ms. Polanski, Chair McInerney adjourned the meeting at 10:50 a.m., on the consensus of the Board.

*Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary*

Approved on April 14, 2016.

Mike McInerney
Oversight Board Chair

Barbara Crump
Oversight Board Secretary

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: May 6, 2016

ITEM III: Consideration of Request from Rajyoga Meditation & Research Center to amend Purchase Sale Agreement by Extending the Due Diligence Period Regarding Property Located at 540 S. Abel Street, Milpitas California (APN 086-10-025).

RECOMMENDED ACTION:

1. Consider the request from Buyer for extension of Due Diligence Period.
2. If the Oversight Board finds that approving the request is in the best interest of the taxing entities and if it is inclined to approve the request, the Oversight Board should do so by approving: Resolution No. 80 Approving First Amendment to Real Property Purchase Sale Agreement and Mutual Escrow Instructions for Property Located at 540 S. Abel, Milpitas, California (APN 086-10-025) Between the Successor Agency and Rajyoga Meditation & Research Center, a Nonprofit Corporation and Authorizing Issuance of New RFP Regarding Said Property if Closing of Sale Is Not Effected.

BACKGROUND AND DISCUSSION:

On December 9, 2015, the Oversight Board considered the sale of the 540 S. Abel property. As a result of an RFP process, four proposals were received in the amounts of \$600,000; \$717,000; \$3 Million; and \$4 Million. The \$3 Million offer was from the County of Santa Clara and was withdrawn just prior to the meeting in light of the \$4 Million offer. The Oversight Board adopted Resolution No. 71 approving the Successor Agency's sale of real property located at 540 S. Abel, Milpitas, California (APN 086-10-025) to Rajyoga Meditation & Research Center, a Nonprofit Corporation ("Rajyoga Meditation"). The parties entered into a Real Property Purchase Sale Agreement in accordance with Resolution No. 71.

Rajyoga Meditation is in the process of securing land use entitlements for the property from the City of Milpitas and has expended significant funds and resources in that regard. The Due Diligence Period under the Purchase Sale Agreement expires on May 9, 2016. Rajyoga Meditation has requested that the Due Diligence Period be extended an additional 90 days. See attached email correspondence dated April 21, 2016.

In the absence of Chair McNerney, special counsel and Vice Chair Knopf have discussed the request and the need for a special meeting of the Oversight Board. The following points should be considered by the Oversight Board:

- (i) the Purchase Sale Agreement provides that the property is sold "as is" and is not subject to completion of land use entitlements;
- (ii) denial of the 90 day extension may result in failure of the sale to close and the process for sale of the property would have to start over;
- (iii) a new RFP process including review of submissions, award of a contract, and a new escrow period will far exceed 90 days and may produce a lower proposal price for sale of the property;
- (iv) expeditious sale of Successor Agency properties is required under the Dissolution Law;
- (v) the Oversight Board should consider the efforts to date made by Rajyoga Meditation to secure its land use entitlements from the City of Milpitas and whether approval of the Rajyoga Meditation request to extend the Due Diligence Period is in the best interest of the Successor Agency and taxing entities to ensure the sale is completed; and
- (vi) approval of the extension to the Due Diligence Period promotes sale of the property sooner than starting a new RFP process;

In the event the Oversight Board approves the extension, Resolution 80 provides not only for the extension but also provides that the Successor Agency and Ad Hoc Committee are authorized to issue a new RFP for sale of the property.

Attachments:

- Email correspondence from Rajyoga
- Oversight Board Resolution No. 80

Hilda Montoy

From: Ritu Patel <ritu_patel@hotmail.com>
Sent: Thursday, April 21, 2016 11:36 AM
To: Hilda Montoy; atma dayal; Brahma Kumaris Silicon Valley
Cc: Emma Karlen; Mike McInerney
Subject: Re: Request for ext regarding Due Diligence Period on 540 S. Abel

Ms. Karlen/Ms. Montoy,

We write to respectfully request an extension of our due diligence period by 90 days. Sister Kusum and Brother Atma have been working diligently for the last 2 1/2 months with the City of Milpitas to procure the necessary zoning to move forward with the purchase of the property. We wanted to set forth for you a general outline of the significant progress that has been made to date.

We received the ratified sales contract on or about February 9, 2016.

On February 4, 2016, Brother Atma and Sister Kusum met with several different city departments (including the fire, police, planning and reparations departments) in order to start the process of converting the property from an institutional zoning property to a mixed-use zoning property. This is a critical condition upon which our purchase of the property is based since it is imperative that the sisters be allowed to maintain a residence at the property.

On February 15, 2016, a city planner was assigned to the case.

From February 15, 2016 through April 7, 2016, Brother Atma and Sister Kusum undertook significant endeavors in order to complete the General Plan Application and gather the requisite documents to be submitted with the Application. They have also paid approximately \$20,000 in permit and filing fees to date. The city planner had cautioned that every effort should be made to submit a complete application with all requested documents included with the Application at the time of submission in order to expedite the processing of this Application. Brother Atma and Sister Kusum spent a significant amount of time obtaining the original building plans from the City of Milpitas (this took about 2 weeks to accomplish). They also hired a draftsman and designer to prepare proposed building plans and made every effort to have the proposed plans prepared in a timely manner.

On April 7, 2016, Brother Atma and Sister Kusum submitted the completed General Plan Application with all the requisite documentation. The City of Milpitas has 30 days in which to respond to this application.

On April 19, 2016, Brother Atma and Sister Kusum also applied with the City of Milpitas for a Conditional Use Permit and Specific Plan Amendments. The General Plan Application must be processed first and the zoning ordinance must be changed before the Conditional Use Permit Application can be processed.

Brother Atma and Sister Kusum's efforts are ongoing. They continue to work very hard in order to complete their due diligence obligations by obtaining the necessary zoning permits. An extension of our due diligence period by 90 days would be greatly appreciated.

Please advise if we can provide you with any additional information. We look forward to your response.

Ritu Patel

Sent from my iPhone

On Apr 21, 2016, at 9:54 AM, Hilda Montoy <hildac@montoylaw.com> wrote:

Please send as soon as possible as if received we will need to prepare documents and schedule a special Board meeting. At this time, they are not scheduled to meet until July.

Thank you.
Hilda

<image001.jpg>

From: Ritu Patel [mailto:ritu_patel@hotmail.com]
Sent: Tuesday, April 19, 2016 12:26 PM
To: Hilda Montoy
Cc: Emma Karlen; Mike McInerney
Subject: Re: Request for ext regarding Due Diligence Period on 540 S. Abel

Thank you for your response Ms. Montoy. We will prepare the required written request and forward it to you shortly. Thank you again for all your assistance in this matter.

Ritu

Sent from my iPhone

On Apr 18, 2016, at 2:14 PM, Hilda Montoy <hildac@montoylaw.com> wrote:

Hello Ms. Patel,
Ms. Karlen forwarded an email you sent her seeking to extend the Due Diligence Period an additional 90 days. As you know the Successor Agency is the Seller and the Oversight Board reviews decisions of the Successor Agency.

Final approval on your request for an extension must be made by the Oversight Board. As you recall, the Due Diligence Period was extended at the time of the award.

I have discussed your request with Mr. McInerney, Chair of the Oversight Board. At this time, if you wish to pursue an extension of the Due Diligence Period, it is necessary to address a writing in greater detail addressed to Ms. Karlen, the Successor Agency representative regarding the sale. Mr. McInerney will be away starting this evening and will not be back until May 4. So please copy me on whatever you send to Ms. Karlen.

Your writing should include the following: efforts to date during the due diligence period, the basis for your request including what it is that the Buyer is trying to accomplish during the Due Diligence Period, whether the Buyer will walk away if permits are not in place even in a scenario where the Due Diligence Period is extended, and any other information you deem relevant.

Because the Oversight is not scheduled to meet until July, the Oversight Board will have to call a special meeting to consider the request. In that regard, please advise as to your client's availability for a special meeting on May 5 or 6.

Thank you.

<image001.jpg>

RESOLUTION NO. 80

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING FIRST AMENDMENT TO REAL PROPERTY PURCHASE SALE AGREEMENT AND MUTUAL ESCROW INSTRUCTIONS FOR PROPERTY LOCATED AT 540 S. ABEL, MILPITAS, CALIFORNIA (APN 086-10-025) BETWEEN SUCCESSOR AGENCY AND RAJYOGA MEDITATION & RESEARCH CENTER, A NONPROFIT CORPORATION; AND AUTHORIZING ISSUANCE OF A NEW RFP REGARDING SAID PROPERTY IF CLOSING IS NOT EFFECTED.

WHEREAS, on December 9, 2015, the Oversight Board adopted Resolution No. 71 approving the Successor Agency's sale of real property located at 540 S. Abel, Milpitas, California (APN 086-10-025) to Rajyoga Meditation & Research Center, a Nonprofit Corporation ("Rajyoga Meditation"); and

WHEREAS, the Successor Agency and Rajyoga Meditation entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter "Purchase Sale Agreement") for purchase of said real property in accordance with Resolution No. 71;

WHEREAS, Rajyoga Meditation is in the process of securing land use entitlements for the property from the City of Milpitas and has expended significant funds and resources in that regard; and

WHEREAS, the 90 day Due Diligence Period set forth in the Purchase Sale Agreement expires on May 9, 2016; and

WHEREAS, Rajyoga Meditation has requested that the 90 day Due Diligence Period be extended an additional 90 days; and

WHEREAS, the Purchase Sale Agreement provides that the property is sold "as is" and is not subject to completion of land use entitlements; and

WHEREAS, denial of the 90 day extension may result in failure of the sale to close and the process for sale of the property would have to start over; and

WHEREAS, a new RFP process including review of submissions, award of a contract, and a new escrow period will far exceed 90 days and the results of such a process may not be favorable; and

WHEREAS, the Oversight Board has considered the efforts to date made by Rajyoga Meditation to secure its land use entitlements from the City of Milpitas; and

WHEREAS, approval of the Rajyoga Meditation request to extend the Due Diligence Period is in the best interest of the Successor Agency and taxing entities to ensure the sale is completed and to avoid commencement of a new RFP process.

NOW, THEREFORE, the Oversight Board of the former Milpitas Redevelopment Agency resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. The Oversight Board:

- a. Finds the best interests of all taxing entities are best served by approval of the request to extend the Due Diligence Period.
- b. Approves the First Amendment to Real Property Purchase and Sale Agreement and Mutual Escrow Instructions (540 S. Abel, Milpitas, California 95035; APN 086-10-025) Between the Successor Agency of the Former Redevelopment Agency of the City of Milpitas and Rayoga Mediation & Research Center, a nonprofit corporation as set forth in Exhibit A.
- c. Directs and authorizes the Successor Agency to execute the First Amendment to the Purchase Sale Agreement attached hereto as Exhibit A.
- d. Determines that in the event the sale does not close, the Oversight Board Ad Hoc Committee and Successor Agency are authorized to issue a new RFP for 540 S. Abel, Milpitas, California 95035; APN 086-10-025. This determination is made to ensure there is no further delay regarding the sale of subject property.

PASSED AND ADOPTED on May 6, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Barbara Crump
Oversight Board Secretary

APPROVED:

Michael McInerney
Oversight Board Chair

**FIRST AMENDMENT TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND
MUTUAL ESCROW INSTRUCTIONS**

(540 S. Abel, Milpitas, CA; APN NO. 086-10-025)

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT ("First Amendment") is entered into by and between the Successor Agency of the Former Redevelopment Agency of the City of Milpitas, a separate public entity (Successor Agency" or "SELLER") and Rajyoga Meditation & Research Center, (BUYER). Buyer and Seller are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

A. The Parties entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter "Purchase Sale Agreement") for purchase of real property located at 540 S. Abel, Milpitas, California, APN No. 086-10-025.

B. The Due Diligence Period under the Purchase Sale Agreement expires on May 9, 2016.

C. BUYER is in the process of getting land use entitlements for the property from the City of Milpitas.

D. BUYER is unable to secure the land use entitlements prior to the expiration of the Due Diligence Period set forth in the Purchase Sale Agreement.

E. While the Purchase Sale Agreement provides that the sale is "as is" and does not provide for the completion of land use entitlements, the Successor Agency believes that the extension of the due diligence period promotes the sale of the property.

F. Buyer and Seller now wish to amend the Purchase Sale Agreement to extend the Due Diligence Period from 90 days to 180 days.

NOW, THEREFORE, the Parties mutually agree as follows

SECTION 1. Section 3A of the Purchase Sale Agreement is hereby amended to read as follows:

A. Due Diligence Period. BUYER shall have one hundred eighty (180) days following the Effective Date to conduct BUYER's due diligence, as BUYER deems necessary, but at BUYER's sole cost and expense, including but not limited the right to review and approve the Property Materials, to inquire and meet with all governmental or quasi-governmental authorities, and to inspect and approve the physical conditions of and all other matters concerning the Property (the "Due Diligence Period"). If BUYER is not satisfied for whatever reason, or no reason,

with the condition of the Property, BUYER may terminate this Agreement not later than the expiration of the Due Diligence Period by providing SELLER and Escrow Holder written notice thereof ("Buyer's Termination Notice") prior to the end of the Due Diligence Period. If BUYER fails to deliver Buyer's Termination Notice, then, BUYER shall be deemed to have elected not to terminate this Agreement

SECTION 2. This First Amendment may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

SECTION 3. Signatures to this First Amendment and any notice given hereunder, transmitted by telecopied or electronic mail shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this First Amendment with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this First Amendment, it being expressly agreed that each party to this First Amendment shall be bound by its own telecopied or e-mailed signature and shall accept the telecopied or e-mailed signature of the other party to this First Amendment.

SECTION 4. Except as expressly modified by this First Amendment, the Purchase Sale Agreement and the rights, duties, and obligations of the Parties thereunder are unchanged and remain in full force and effect as originally written. From and after the terms and conditions of the execution of this First Amendment, all references in the Purchase Sale Agreement to the "Agreement" shall be deemed as references to the Purchase Agreement as modified by this First Amendment.

SECTION 5. Upon execution by both parties, this First Amendment shall be effective on May 6, 2016.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Real Property Purchase Sale Agreement and Mutual Escrow Instructions as of the date first written above.

SELLER:

Successor Agency of the Former Redevelopment
Agency of the City of Milpitas

Name: _____

Title: _____

Date: _____

ATTEST:

Name: _____
Clerk, Successor Agency

BUYER:

Rajyoga Meditation and Research Center

Name: _____
Title: _____
Date: _____

ATTEST:

Name: _____
Title: _____